Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-324

SIDNEY S. HICKLIN, RUBY E. DORMAN, BETTY CLOUD, TOMMY RAY WOODRUFF, FREDERICK A. MATHERS, HARRY A. BROWNING, EMMETT RAY, and JOSEPH G. O'BRIEN,

Appellants,

v.

EDMUND ORBECK, Commissioner of the Department of Labor of the State of Alaska, and GUY RICHARD MARTIN, Commissioner of the Department of Natural Resources of the State of Alaska,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALASKA

APPENDIX

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APPEAL WAS DOCKETED ON AUGUST 29, 1977

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THE SUPREME COURT OF THE STATE OF ALASKA

SIDNEY S. HICKLIN; RUBY E. DORMAN; BETTY CLOUD; TOMMY RAY WOODRUFF; FREDERICK A. MATHERS; HARRY A. BROWNING; EMMETT RAY; and JOSEPH G. O'BRIEN, *Appellants,* v. EDWARD ORBECK, Commissioner of the Department of Labor of the State of Alaska, and GUY RICHARD MARTIN, Commissioner of Natural Resources of the State of Alaska, *Appellees.*	Supreme Court File No. 3025 Superior Court File No. 76-3300

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CLERK'S CERTIFICATE

I, Connie S. Staska, Chief Deputy Clerk of the Supreme Court of the State of Alaska, at Juneau, do hereby certify as follows:

1. The record on appeal in the above case was prepared by me and consists of all the matters shown in the foregoing table of contents.

2. The preparation of the record on appeal was completed on August 11, 1977 and forwarded to the Clerk, Supreme Court of the United States, Washington, D.C. via certified airmail on August 11, 1977.

3. Notice of the matters mentioned in paragraph 2 of this certificate was given by me to the persons named below by mailing to each on August 11, 1977 a true copy of this Table of Contents and Certificate.

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DATED at Juneau, Alaska, this 11th day of August, 1977.

/s/ Connie Staska

Connie Staska
Chief Deputy Clerk
Supreme Court
State of Alaska

II

OPINION OF THE SUPREME COURT OF THE STATE OF ALASKA AS ANNOUNCED ON JUNE 3, 1977 AND FORMALLY ENTERED ON JUNE 13, 1977

This Opinion is set forth in full with its dissenting Opinions in Appendix I of Appellants' Jurisdictional Statement.

III

Chapter 40. Local Hire Under State Leases.

Section	Section
10. State policy	60. Hearings and investigations
20. Legislative findings	70. Penalties
30. Resident employment	80. Injunctive relief
40. Reporting provisions	90. Definitions
50. Applicability of chapter	

* * *

Editor's note. – Section 2, ch. 191, SLA 1972, provides: "If a court of competent jurisdiction invalidates any of the criteria or tests of residency in sec. 90 of this chapter, the term 'resident' then means a person who satisfies the remaining criteria or tests not invalidated, and this chapter shall be administered and enforced accordingly.

* * *

Sec. 38.40.010. State policy. It is the policy of the state in the development of its natural resources to seek and accomplish the development of its human resources by providing maximum employment opportunities for its residents in conjunction with natural resource management. (§1 ch 191 SLA 1972)

* * *

Sec. 38.40.020. Legislative findings. The legislature finds that Alaska has a uniquely high unemployment record among the states due both to cultural and geographical migration barriers which record has existed for many years and which experts have attested will persist without drastic governmental intervention. The legislature further finds that employment opportunities which from time to time occur in the areas of the state suffering

from the largest chronic unemployment problem are nonrecurring and usually relate to the exploitation of the state's natural resources and that the state has an obligation to assure that the benefits of this employment enure to the residents of the state. (§ 1 ch 191 SLA 1972)

* * *

Sec. 38.40.030. Resident employment. (a) In order to create, protect and preserve the right of Alaska residents to employment, the commissioner of natural resources shall incorporate into all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements, or any renegotiation of any of the preceding to which the state is a party, provisions requiring the lessee to comply with applicable laws and regulations with regard to the employment of Alaska residents, a provision requiring the employment of qualified Alaska residents, a provision prohibiting discrimination against Alaska residents and, when in the determination of the commissioner of natural resources it is practicable, a provision requiring compliance with the Alaska Plan, all in accordance with the provisions of this chapter.

(b) All employment falling within the purview of §50 of this chapter shall be filled by Alaska residents if they are qualified and available. The commissioner of labor, whose decision is final as to residency, shall determine the resident status of individuals for purposes of this chapter and issue a certificate to persons determined to be residents of the state. The commissioner may issue exemptions from this chapter to the employer for those individuals he shall determine to be administrative, management, or professional employees of the employer.

(c) In implementing this chapter the commissioner of labor may require compliance with the terms and condi-

of the Alaska Plan as approved by the United States Secretary of Labor to the extent feasible.

(d) The Department of Labor shall adopt regulations necessary to implement the provisions of this chapter. (§1 ch 191 SLA 1972; am §§2 – 4 ch 183 SLA 1976)

* * *

Sec. 38.40.040. Reporting provisions. (a) An employer obligated to meet resident employment requirements under this chapter shall comply with those reporting provisions which the commissioner of labor determines are reasonably necessary to carry out the purposes and intent of this chapter.

(b) The Department of Labor shall prepare a list of certified Alaska residents and, upon request, shall make it available to an employer subject to this chapter, and to any employment or dispatching agency, union, or other similar entity. (§ 1 ch 191 SLA 1972; am §§ 5, 6 ch 183 SLA 1975)

* * *

Sec. 38.40.050. Applicability of chapter. (a) The provisions of this chapter apply to all employment which is a result of oil and gas leases, easements, leases or right-of-way permits for oil or gas pipeline purposes, unitization agreements or any renegotiation of any of the preceding to which the state is a party after July 7, 1972; however, the activity which generates the employment must take place inside the state and it must take place either on the property under the control of the person subject to this chapter or be directly related to activity taking place on the property under his control and activity must be performed directly for the person subject to this chapter or his contractor or a subcontractor of his contractor or a supplier of his contractor or subcontractor.

(b) The Department of Labor shall determine a dollar amount value of each project or activity covered by this chapter and set a minimum dollar figure below which this chapter does not apply. In arriving at this minimum dollar figure the department shall consider the benefit which enures to Alaska residents versus administrative and enforcement costs. The department, by appropriate investigation and ruling, shall insure that projects or activities within projects are not artifically divided to prevent coverage under this chapter. The burden is on the person covered by this chapter to show that artificial division has not occurred or is not occurring. (§ 1 ch 191 SLA 1972)

* * *

Sec. 38.40.060. Hearings and investigations. (a) The Departments of Labor and Natural Resources shall promulgate appropriate regulations to implement the provisions of this chapter. It is the employer's responsibility to initially determine and adjudge the work qualifications of the prospective employee. A qualified Alaska resident who has been rejected for or terminated from employment by an employer subject to this chapter may, within 15 days from the rejection or termination, file a written request for a hearing before the Department of Labor to determine if the employer is in compliance with the provisions of this chapter. The department shall investigate, set a date for and hold a hearing within 30 days after receipt of the request, unless the person applying requests a longer period of time.

(b) The Department of Labor may, on its own motion, conduct appropriate investigations and hearings to determine compliance with the provisions of this chapter.

(c) The commissioner of labor, acting on a complaint or his own motion, upon finding wilful noncompliance by

an employer with the provisions of this chapter, may certify that finding to the Department of Natural Resources.

(d) Hearings and investigations conducted under this section are not subject to the Administrative Procedure Act (AS 44.62), but are subject to judicial review under § 70(a) of this chapter if appealed within 30 days. (§ 1 ch 191 SLA 1972; am § 7 ch 183 SLA 1976)

* * *

Sec. 38.40.070. Penalties. (a) Upon finding that a qualified Alaska resident has been rejected for or terminated from employment, in violation of this chapter, the Department of Labor may require the employer to pay the qualified Alaska resident triple the wages he lost, or any damages or expenses actually incurred as a result of the wrongful action if they exceed the triple wages assessed. The imposition or withholding of any payment or penalty under this section may be appealed to the superior court. The superior court shall hear these matters de novo.

(b) The Department of Natural Resources, upon receipt of a certification of wilful noncompliance of an employer by the commissioner of labor and after appropriate investigations and hearings, may impose the following penalties:

(1) increase rent or other forms of compensation received by the state by a factor of no more than 10 but in no event to exceed $100,000;

(2) require that all or any portion of project operations be halted;

(3) stop payment on any or all existing contracts between that person and the state; or

(4) remove, for an appropriate period of time, the eligibility of the person to contract with the state or any of its political subdivisions.

(c) Notwithstanding (a) of this section, no penalty may be imposed against a lessee because of noncompliance with the provisions of this chapter by a supplier of the lessee's contractor or subcontractor if the lessee has received and retained a certificate from the supplier certifying that the supplier is in compliance with the provisions of this chapter. However, no certificate from the supplier is a bar to the imposition of a penalty against a lessee unless the certificate was made (1) upon oath or affirmation, (2) on forms prepared by the commissioner of labor furnished to the lessee before the date of the supplier's noncompliance, and the lessee has furnished a copy of the certificate to the commissioner of labor together with additional information the commissioner may require, and (3) by a supplier who is not himself a contractor or subcontractor of the lessee.

(d) The commissioner of labor may, by regulation, designate the intervals within which certificates of suppliers must be furnished under this section in order to constitute a bar against the imposition of penalties. (§ 1 ch 191 SLA 1972; am § 8 ch 183 SLA 1976)

* * *

Sec. 38.40.080. Injunctive relief. The Department of Labor or the Department of Natural Resources, in addition to the imposition of any penalties under § 70 of this chapter, may seek injunctive relief against an employer not in compliance with the provisions of this chapter. Either department may seek injunctive relief to enforce penalties which it has imposed under § 70 of this chapter. (§ 1 ch 191 SLA 1972; am § 9 ch 183 SLA 1976)

* * *

Sec. 38.40.090. Definitions. In this chapter

(1) "resident" means a person who

(A) except for brief intervals, military service, attendance at an educational or training institution, or for good cause, is physically present in the state for a period of one year immediately before the time his status is determined;

(B) maintains a place of residence in the state;

(C) has established residency for voting purposes in the state;

(D) has not, within the period of required residency, claimed residency in another state; and

(E) shows by all attending circumstances that his intent is to make Alaska his permanent residence;

(2) "qualified" means capable, through education, training, or experience, of performing the duties and satisfying the usual terms and conditions of the employment, if those duties, terms and conditions meet the reasonable standards of the industry as required of other employees performing the same type of work in the industry;

(3) "wilful noncompliance" means intentionally, knowingly, or purposely, without justifiable excuse, not giving preference to qualified Alaska residents in employment covered by this chapter;

(4) "noncompliance" means not giving preference to qualified Alaska residents in employment covered by this chapter. (§ 1 ch 191 SLA 1972; am § 10 ch 183 SLA 1972; am § 10 ch 183 SLA 1976)

* * *

IV

THE ADMINISTRATIVE REGULATIONS OF THE ALASKA DEPARTMENT OF LABOR RELATING TO THE ACT IN QUESTION

The Administrative Regulations of the Alaska Department of Labor relating to the Act in question are set forth in full in Appendix III (p. 38a) of Appellants' Jurisdictional Statement.

V

CEASE AND DESIST DISPATCHING NON-RESIDENTS WHEN QUALIFIED RESIDENTS ARE AVAILABLE TO FILL PIPELINE PROJECT JOBS

The Alaska Department of Labor has received numerous complaints alleging that persons who are not Alaska residents have been dispatched on pipeline jobs when *qualified* Alaska residents were available to fill the jobs. That is a violation of Alaska law. (AS 38.40.010 et seq.). It is also a clear violation of the pipeline project agreement. (Article VI, provision 8).

Pursuant to AS 23.05.060(5), YOU ARE HEREBY DIRECTED TO RESPOND TO ALL OPEN JOB CALLS BY DISPATCHING *ALL QUALIFIED* ALASKA RESIDENTS BEFORE *ANY* NON-RESIDENTS ARE DISPATCHED.

An Alaska resident, according to Alaska law, is a person who:

(1) except for brief intervals or military service has been physically present in the state for a period of one year immediately prior to the time he enters into a contract of employment; and

(2) maintains a place of residence within the state; and

(3) has established a residency for voting purposes within the state; and

(4) has not, within the period of required residency, claimed residency in another state; and

(5) shows by all attending circumstances that his intent is to make Alaska his permanent residence. AS 38.040.090.

Individuals may be certified as Alaska residents by applying for and receiving an Alaska Resident Card from the Department of Labor. The state will take action to obtain the IMMEDIATE REMOVAL FROM HIS JOB of any individual who furnishes false information about his residency status. Any individual who falsifies an application or statement concerning residency status will also be subject to CRIMINAL PROSECUTION.

/s/ Edmund N. Orbeck

EDMUND N. ORBECK
Commissioner of Labor

Department of
Labor
State of Alaska
[SEAL]

Executive Order #76-1
Department of Labor
State of Alaska
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March 1, 1976